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CONSIDERATION WITH A VIEW TO ADOPTING, PURSUANT TO ARTICLE 27 OF THE CONVENTION, PROCEDURES AND INSTITUTIONAL MECHANISMS FOR THE RESOLUTION OF QUESTIONS THAT MAY ARISE WITH REGARD TO IMPLEMENTATION

CONSIDERATION WITH A VIEW TO PROPOSING FOR ADOPTION, IN ACCORDANCE WITH ARTICLE 28, PARAGRAPHS 2(a) OF THE CONVENTION, AN ANNEX CONTAINING ARBITRATION AND CONCILIATION PROCEDURES

Note by the secretariat

By its decision 9/COP.1, the Conference of the Parties decided to include as selected items on the agenda for its second and, if necessary, third session:

- Consideration with a view to adopt, pursuant to article 27 of the Convention, procedures and institutional mechanisms for the resolution of questions that may arise with regard to implementation; and

- Consideration with a view to adopt, in accordance with article 28, paragraph 2(a) of the Convention, an annex containing arbitration procedures.

The secretariat prepared the present note to facilitate the discussion on these items, as well as discussion on conciliation procedures pursuant to article 28, paragraph 6 of the Convention.

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PART ONE: RESOLUTION OF QUESTIONS ON IMPLEMENTATION

I. INTRODUCTION

1. At its eighth session, the Intergovernmental Negotiating Committee for the Elaboration of an International Convention to Combat Desertification (INCD) considered the question of the procedures to resolve questions on implementation on the basis of document A/AC.241/50. This latter document was prepared by the secretariat in response to a request from the INCD by virtue of paragraph 5 of its resolution 6/1 entitled "Organization and programme of work for the interim period" (A/50/74, appendix II).

2. At the same session, the INCD by its decision 8/10 postponed further consideration of the item on "resolution of questions" to the first session of the Conference of the Parties (COP) to the Convention to Combat Desertification (CCD) (A/51/76). Subsequently, by its decision 9/COP.1, subparagraph 3(b), the COP decided to include on the agenda for its second and, if necessary, its third session the item on procedures and institutional mechanisms for the resolution of questions that may arise with regard to implementation (ICCD/COP(1)/11/Add.1).

3. The present note updates document A/AC.241/50. More particularly, it provides current information with regard to the relevant precedents cited in that document as well as information on new developments. The preliminary list of possible queries outlined in section III of document A/AC.241/50 is maintained. The background information together with the list of preliminary questions are intended to assist the COP in its deliberations to formulate procedures and mechanisms required for the purposes of article 27 of the CCD without attempting to design a "resolution of questions" regime.

II. BACKGROUND

4. Article 27 of the Convention provides that:

> "The Conference of the Parties shall consider and adopt procedures and institutional mechanisms for the resolution of questions that may arise with regard to the implementation of the Convention."

5. Provisions of that type are generally considered to be a relatively new feature of environmental conventions. They are an attempt to pre-empt and avoid confrontation that might trigger more formal dispute resolution procedures. They are thought to be particularly well suited to global environmental regimes, where many Parties share an interest in the effective implementation of the Convention's objectives.

6. The pre-emptive and non-confrontational approach is becoming the practice in certain new environmental treaties, especially when non-implementation stems from lack of capacity or inadvertence. Because procedures for resolution of questions remain within the jurisdiction of a convention's governing body, they are generally considered as a means of enabling Parties to a convention to discuss its implementation in a constructive and cooperative manner to secure amicable solutions.

III. RELEVANT PRECEDENTS

7. The most relevant precedents relating to article 27 of the CCD include the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer (the Montreal Protocol); the 1994 Protocol on Further Reductions of Sulphur Emissions (the Second Sulphur Protocol) to the 1979 United Nations Economic Commission for Europe (UN/ECE) Convention on Long-Range Transboundary Air Pollution (LRTAP), as well as article 13 of the United Nations Framework Convention on Climate Change (FCCC).

8. While the few existing precedents provide some legal bases for giving effect to article 27 of the CCD, they must be examined with caution. The balance of obligations varies from one treaty to another. Hence, the procedures and institutional mechanisms need to be tailored to suit individual treaties. The following review of relevant precedents should therefore be examined with this in mind.

9. The full non-compliance procedure of the Montreal Protocol was created by decision IV/5 at the fourth meeting of the Parties to that Protocol (UNEP/OzL.Pro.4/15). It is in the process of being reviewed by an ad hoc working

group of legal and technical experts on non-compliance1/ established in September 1997 by decision IX/35 of the Parties to the Protocol (UNEP/OzL.Pro.9/12). By the date of the CCD Conference of the Parties in Dakar, the Ad Hoc Working Group will have presented its final report to the tenth meeting of the Parties and the actions taken in light of the options outlined in footnote 1 below will be clear.

10. Decision 1997/2 of the Executive Body of the LRTAP Convention urges the Parties to the Second Sulphur Protocol to apply the new compliance regime set out in its annex2/. In fact, decision 1997/2 has the effect of applying the new compliance regime to all LRTAP protocols but for illustrative purposes only the Second Sulphur Protocol is mentioned in the present note.

11. With regard to the United Nations Framework Convention on Climate Change (FCCC), its article 13 provides that the COP of the FCCC shall, at its first session, consider "the establishment of a multilateral consultative process, available to Parties on their request, for the resolution of questions regarding the implementation of the Convention."

12. Accordingly, the COP 1 of the FCCC established an open-ended ad hoc working group of technical and legal experts "to study all issues relating to the establishment of a multilateral consultative process and its design" (FCCC/CP/1995/7/Add.1, decision 20/CP.1). The report of the latest meeting of the Ad Hoc Group on Article 13 (June 1998) indicates that there is agreement on key areas such as on the objective, the nature and outcome of the multilateral consultative process (MCP) as well as on the creation of a standing Multilateral Consultative Committee reporting to the COP of the FCCC (FCCC/AG13/1998/2).

13. As in the case of the Montreal Protocol, the COP 4 of the FCCC will, by the time of the CCD Conference of the Parties in Dakar, have considered the final report of the Ad Hoc Group on Article 13 and decided on whether to adopt, modify or reject it.

14. It is to be noted from the outset that the Parties to the Montreal Protocol, the Second Sulphur Protocol and the FCCC have all decided that their respective "resolution of questions" regimes shall apply without prejudice to the provisions of dispute settlement procedures already existing in the individual treaties.

15. The following sections A and B provide updated information on (a) the procedural aspects and (b) the related institutional aspects of the regimes concerned.

A. Procedural aspects of precedents

16. Procedural aspects of mechanisms for the resolution of questions envisaged under article 27 of the CCD could address such substantive issues as: the principles governing implementation, i.e. the objectives and nature of the mechanism; powers assigned to the institutional mechanism; who can invoke the procedure; and the outcome of the procedure.

Objectives

17. The aim of the procedure contained in the Montreal Protocol is to secure "an amicable solution of the matter on the basis of respect for the provisions of the protocol". The system of the Second Sulphur Protocol foresees cooperative measures such as assisting Parties to comply with the Protocol. The objective of the MCP under the FCCC is to resolve questions regarding implementation of the FCCC by providing advice on assistance to Parties to overcome difficulties encountered in

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1/ The Ad Hoc Group met in July 1998 and decided to prepare a draft decision for consideration by the Parties to the Montreal Protocol. Three options were presented for the Group's conclusion: (a) a list of amendments to the text of non-compliance procedures; (b) concerns reflected in a decision in the form of a commentary, guidance or interpretive statements; (c) a combination of the first two options (see document UNEP/Ozl.Pro/WG.1/17/3).

2/ ECE/EB.AIR/53.

their implementation, promote understanding of the FCCC and prevent disputes from arising.

Nature

18. The main principles of the non-compliance regime of the Montreal Protocol are avoidance of complexity, avoidance of confrontation, transparency and the leaving of decision-making to the Meeting of the Parties. Similar principles are to be found in the Second Sulphur Protocol and the FCCC regimes. The latter regime specifies that its MCP is facilitative, cooperative, non-confrontational, transparent, timely and non-judicial.

Mandate/function

19. The Montreal Protocol Implementation Committee (MPIC) handles questions regarding non-compliance with the aim of securing an amicable solution. Likewise, the functions of the Second Sulphur Protocol Implementation Committee include: reviewing periodically compliance by Parties with the reporting requirements of the protocols and considering any submission or referrals made to it with a view to securing a constructive solution.

20. As for the standing Multilateral Consultative Committee of the FCCC, its mandate is to consider questions of implementation by: (a) clarifying and resolving questions; (b) providing advice on the procurement of technical and financial resources for the resolution of these difficulties; and (c) providing advice on the compilation and communication of information.

Invoking of procedures

21. The Montreal Protocol and the Second Sulphur Protocol have almost identical provisions relating to the invoking of procedures. Under the former regime the following could invoke the procedures: one or more Parties regarding another Party's implementation; a Party with regard to its own inability to comply fully in spite of its best bona fide efforts; and the secretariat with regard to preparation of reports under the Protocol and on any other information concerning compliance with the Protocol's provisions.

22. However, the role of the secretariat of the Second Sulphur Protocol is greater than that of the Montreal Protocol: it is not limited to the provision of information and is allowed to report on possible non-compliance. If upon reviewing the reports submitted by Parties, it becomes aware of possible non-compliance by any Party, it can request further information on the matter and it can report to the Implementation Committee in the case of failure to resolve the matter through administrative action and diplomatic contacts.

23. With regard to the MCP of the FCCC, that process is envisaged to be triggered by: (a) a Party with respect to its own implementation; (b) a group of Parties with respect to their own implementation; (c) a Party or group of Parties; and/or (d) the COP of the FCCC.

Other powers

24. Where it considers it necessary, the MPIC has the power to request through the secretariat more information on matters under its consideration. It also has the power to undertake information-gathering inside the territory of a Party concerned but only "upon invitation of the Party concerned". The Implementation Committee of the Second Sulphur Protocol possesses similar powers.

25. COP 1 of the FCCC provided, *inter alia*, the mandate for undertaking an in-depth review of individual reports of Annex I Parties[3]. That COP also agreed to the possibility of on-site visits to Annex I country Parties, almost all of which extended invitations to this effect[4].

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[3] FCCC/CP/1995/7/Add.1, decision 2/CP.1, paragraph 2.

[4] See Jo Elizabeth Butler, "The establishment of a dispute resolution/non-compliance mechanism in the Climate Change Convention", The American Society of International Law, Proceedings of the 91st Annual Meeting,

26. Experience has shown that the in-depth reviews, including country visits, have been conducted in a facilitative and non-confrontational manner5/. Both are carried out by experts drawn from developed countries, economies in transition and developing countries. Secretariats of several intergovernmental organizations have also provided experts. How the in-depth reviews would relate to article 13 of the FCCC remains to be seen.

Outcome

27. The MPIC forwards a report to the Meeting of the Parties of the Montreal Protocol, including any recommendations it considers appropriate. The Implementation Committee of the Second Sulphur Protocol also reports to the LRTAP Parties on its activities at the annual sessions and makes such recommendations as it considers appropriate regarding compliance with the Protocol. Again, the outcome of the MCP of the FCCC is envisaged to be a report that the standing Committee submits to the COP along with concerned Parties' comments on the conclusions and recommendations of the report.

B. Related institutional aspects of precedents

28. Issues relating to the institutional aspects of the "resolution of questions" mechanisms include the matter of composition of such a mechanism and the regularity of meetings.

Composition

29. The Implementation Committee of the Montreal Protocol consists of ten members while that of the Second Sulphur Protocol is composed of eight members. Apart from this aspect the two regimes concerned are comparable in matters related to composition. Members of the implementation committees of both the Montreal Protocol and the Second Sulphur Protocol are elected by the Parties of the respective regimes on the basis of equitable geographical distribution.

30. Elected members under the two regimes concerned serve a term of two years and may be re-elected but only for one consecutive term. To ensure a certain level of experience among the members serving on the Committees, only half are replaced every year. Furthermore, the committees concerned elect their own president and vice-president both of whom serve a one-year term. In the FCCC context the question of the composition of the standing committee proposed to be created under article 13 remains unresolved.

Regularity of meetings

31. MPIC meets at least biannually, unless it decides otherwise, and its meetings are organized by the secretariat. The Implementation Committee of the LRTAP meets twice a year, unless it decides otherwise. However, the standing committee proposed to be established for the purpose of article 13 of the FCCC is envisaged to meet at least once a year and whenever practicable in conjunction with sessions of the COP or its subsidiary bodies.

IV. NEW DEVELOPMENTS

32. Several other possible related precedents in the area of resolution of questions are also evolving. First among these is the Kyoto Protocol to the FCCC. This Protocol was adopted by the COP of the FCCC on 11 December 1997. Article 18 of the Kyoto Protocol requires the COP of the FCCC, serving as the meeting of the Parties to the Protocol to approve, at its first session, appropriate and effective procedures and mechanisms to determine and address cases of non-compliance with the Protocol, including through the development of an indicative list of consequences, taking into account the cause, type, degree and frequency of non-compliance.

33. At the same time article 16 of the Kyoto Protocol enables the COP of the FCCC serving as the meeting of the Parties to the Protocol to consider and to modify, as appropriate, the application of the MCP referred to in article 13 of the FCCC.

Washington, D.C. (9-12 April 1997).

5/ Ibid.

Any MCP that may be applied to the Kyoto Protocol is to operate without prejudice to the procedures and mechanisms established under article 18 of that Protocol.

34. How the procedures and mechanisms to be developed under the Kyoto Protocol will relate to what is created under article 13 of the FCCC remains to be seen. Any modification in the application of the MCP referred to in article 11 for the purposes of the Kyoto Protocol may have an impact on other processes based on that article. Moreover, the provisions of the CCD may possibly overlap with the provisions of the Kyoto Protocol, given the scope and the breadth of the former.

35. Article 3 of the CCD suggests an approach to implementation that is integrated and based on partnership and participation. If the COP decides that the mechanisms and procedures of article 27 should reflect such an approach then the participatory notions of article 19 of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Convention on Public Participation) might be of relevance.

36. The Convention on Public Participation was adopted by the Environment for Europe Conference held on 23-25 June 1998. It should be borne in mind in considering the possible relevance of this Convention that it relates to a restricted geographic area and has yet to enter into force. Article 15 of that Convention provides for reviewing compliance by requiring the Meeting of the Parties to establish, on a consensus basis, optional arrangements of a non-confrontational, non-judicial and consultative nature for reviewing compliance. The arrangements are to allow for appropriate public involvement and may include the option of considering communications from members of the public on matters related to that Convention.

37. Another example lies in article 17 of the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. This latter convention was adopted and opened for signature in Rotterdam on 10-11 September 1998. The Convention on Prior Informed Consent also envisages the development of a non-compliance regime. Its article 17 requires the governing body of the Convention concerned to, as soon as practicable, develop and approve procedures and institutional mechanisms for determining non-compliance with the Convention and for treatment of Parties found to be in non-compliance.

V. RELEVANT CONSIDERATIONS

38. In light of the above review, the COP of the CCD either through a working group or some other mechanism at its choice, may wish to address certain preliminary questions which might include the following:

(a) What is the relationship between the procedures and institutional mechanisms pursuant to article 27 and the review of implementation by the COP pursuant to article 22, as well as the related provisions on communication of information pursuant to article 26?

(b) What is the relationship between the procedures and institutional mechanisms of article 27 and the dispute settlement procedures provided for under article 28? Are they mutually exclusive, i.e. should recourse to the procedures under one article prevent any recourse under the other?

(c) What are the types or range of questions that could be raised under the procedures and institutional mechanisms pursuant to article 27?

(d) What principles should govern the procedures and institutional mechanisms of article 27? Is it sufficient that they should be simple, transparent, facilitative and non-confrontational in character?

(e) What should the exact nature and composition be of the institutional mechanisms contemplated under article 27? Should membership and participation in them be restricted to representatives of Parties or should there be a role for experts such as legal, economic, social or technical experts appointed on a personal basis?

(f) Who can invoke article 27? In other words, could article 27 be triggered by entities other than Parties, for example intergovernmental organizations? non-governmental organizations? the secretariat? the subsidiary bodies of the CCD?

(g) Should the procedures and mechanisms be public and open-ended or private? What should be the degree of transparency and flexibility?

(h) At what point in time and under what conditions can a Party trigger the application of the procedures and institutional mechanisms pursuant to article 27?

(i) What would be the time-frame of application of such procedures and mechanisms from the time they are triggered to the time conclusions are reached?

(j) What would be the modalities by which such procedures and mechanisms arrive at their conclusions? What would be the nature of their various phases?

(k) What would be the legal effect, if any, of the conclusions of such procedures and mechanisms?

(l) What measures should be taken for the adoption of the procedures and institutional mechanisms?

VI. TIMETABLE FOR ACTION

39. Bearing in mind decision 9/COP.1, subparagraph 3(b), referred to in paragraph 2 above, the COP might want to consider how best to incorporate the consideration of the "resolution of questions" agenda item in its future work programme. Possible approaches for addressing the preliminary queries outlined in section IV could include the following options:

(a) Inviting COP members to communicate their views in writing to the secretariat by an agreed date and requesting the secretariat to compile these views for future COP sessions;

(b) Establishing an ad hoc committee of legal experts to review this matter and report to the COP at an agreed date;

(c) Pursuing a combination of (a) and (b).

PART TWO: PROCEDURES FOR CONCILIATION AND ARBITRATION

I. INTRODUCTION

1. In paragraph 5 of its resolution 6/1 entitled "Organization and programme of work for the interim period" (A/50/74, appendix II), adopted at its sixth session, the INCD requested the Interim Secretariat to prepare draft annexes on conciliation and arbitration for its eighth session. Document A/AC.241/50 was prepared in response to that request, and the present note is based almost entirely on that document.

II. BACKGROUND

2. Article 28 of the Convention provides that, when ratifying, accepting, approving, or acceding to the Convention, or at any time thereafter, a Party other than a regional economic integration organization may declare in a written instrument that, in respect of any dispute concerning the Convention, it recognizes arbitration and/or submission to the International Court of Justice as compulsory means of dispute settlement in relation to any Party accepting the same obligation.

3. Article 28 further provides that, if the Parties to a dispute have not accepted the same or any procedure and if they have not been able to settle their dispute within twelve months following notification by one Party to another that a dispute exists between them, the dispute shall be submitted to conciliation at the request of any Party to the dispute.

4. Owing to time pressure during the negotiation of the Convention, it was not possible to include annexes on conciliation and arbitration as part of the original text. Hence, paragraphs 2 and 6 of article 28 provide that arbitration and conciliation shall be in accordance with "procedures adopted by the Conference of the Parties in an annex as soon as practicable".

III. TIMING OF ADOPTION OF ANNEXES

5. The Convention does not require the adoption of annexes on conciliation and arbitration at the first session of the Conference of the Parties. It rather provides that such annexes shall be adopted "as soon as practicable".

IV. STATUS OF ANNEXES AND PROCEDURE FOR ADOPTION

6. Consistent with article 29 of the Convention, annexes on arbitration and conciliation will form an integral part of the Convention. Once adopted by the Conference of the Parties in accordance with article 30, they shall enter into force for all Parties to the Convention six months after the date of communication by the Depositary of their adoption, except for Parties which notify in writing their non-acceptance, in accordance with article 31.

V. THE DRAFT ANNEXES

7. Procedures for arbitration and conciliation to resolve disputes relating to the interpretation or application of conventions abound. The wording and structure of such procedures is, therefore, well established. In preparing the drafts in appendices I and II, it appeared most appropriate to find inspiration in precedents, with the important proviso that procedures must be adapted to the subject-matter in hand. Precedents examined include the Optional Rules for Arbitrating Disputes Between Two States of the Permanent Court of Arbitration, Annex VI of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention), procedures pursuant to the Vienna Convention for the Protection of the Ozone Layer (Vienna Convention), as well as Annex II of the Convention on Biological Diversity.

8. In light of the substantive provisions contained in the Convention to Combat Desertification, it would appear that flexible and concise procedures would be best suited to the Convention. Such procedures would let the Parties adapt the procedures to relevant circumstances. In any case, they should not involve cumbersome proceedings for the Parties. Against this background, the draft annexes in appendices I and II are largely modelled on concise procedures such as relevant annexes of the Convention on Biological Diversity and the Basel Convention rather than the longer form of the Rules of the Permanent Court of Arbitration.

9. The drafts are, of course, adapted to take account of the subject-matter and legal characteristics of the Convention to Combat Desertification, including the fact that annexes form an integral part of the Convention. Headings were added for ease of reference.

Appendix I

DRAFT ANNEX ON ARBITRATION

Following is the text of a draft annex on arbitration, which could be adopted as Annex V of the Convention.

ANNEX V

ARBITRATION

Purpose

Article 1

The present Annex provides the procedures for arbitration referred to in article 28 of the Convention.

Notification of disputes

Article 2

1. The claimant Party shall notify the Permanent Secretariat that the Parties are referring a dispute to arbitration pursuant to article 28 of the Convention. The notification shall state the subject-matter of arbitration and include, in particular, the articles of the Convention, the interpretation or application of which are at issue.

2. If the Parties do not agree on the subject-matter of the dispute before the President of the Arbitral Tribunal is designated pursuant to Article 3, the Tribunal shall determine the subject-matter.

3. The Permanent Secretariat shall forward the information thus received to all Parties to the Convention.

Appointment of arbitrators

Article 3

1. In disputes between two parties, a Tribunal shall be established consisting of three members. Each of the parties to the dispute shall appoint an arbitrator and the two arbitrators so appointed shall designate by comm agreement the third arbitrator who shall be the President of the Tribunal. The latter shall not be a national of any of the parties to the dispute, nor have his or her usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.

2. In disputes between more than two parties, parties in the same interest shall appoint one arbitrator jointly by agreement.

3. Any vacancy shall be filled in the manner prescribed for the initial appointment.

Failure to appoint arbitrator or designate President

Article 4

1. If the President of the Tribunal has not been designated within two months of the appointment of the second arbitrator, the Secretary-General of the United Nations shall, at the request of a Party, designate the President within a further two-month period.

2. If one of the Parties to the dispute does not appoint an arbitrator within two months of receipt of the request, the other Party may inform the Secretary-General of the United Nations, who shall make the designation within a further two-month period.

Basis for decisions

Article 5

The Tribunal shall render its decisions in accordance with the provisions of the Convention and international law.

Rules of procedure

Article 6

Unless the parties to the dispute otherwise agree, the Arbitral Tribunal shall determine its own rules of procedure.

Interim measures of protection

Article 7

The Tribunal may, at the request of one of the Parties, recommend essential interim measures of protection.

Facilitating work of the Tribunal

Article 8

The parties to the dispute shall facilitate the work of the Arbitral Tribunal and, in particular, using all means at their disposal, shall:

(a) Provide it with all relevant documents, information and facilities; and

(b) Enable it, when necessary, to call witnesses or experts and receive their evidence.

Confidentiality of information

Article 9

The parties and the arbitrators are under an obligation to protect the confidentiality of any information they receive in confidence during the proceedings of the Tribunal.

Costs of Tribunal

Article 10

1. Unless the Arbitral Tribunal determines otherwise because of the particular circumstances of the case, the costs of the Tribunal shall be borne by the parties to the dispute in equal shares.

2. The Tribunal shall keep a record of all its costs, and shall furnish a final statement thereof to the parties.

Intervention in proceedings

Article 11

Any Party to the Convention that has an interest of a legal nature in the subject-matter of the dispute, which may be affected by the decision in the case, may intervene in the proceedings with the consent of the Tribunal.

Counter-claims

Article 12

The Tribunal may hear and determine counter-claims arising directly out of the subject-matter of the dispute.

Non-appearance of a party

Article 13

If one of the parties to the dispute does not appear before the Tribunal or fails to defend its case, the other party may request the Tribunal to continue the proceedings and to make its award. The absence of a party or a failure of a party to defend its case shall not constitute a bar to the proceedings. Before rendering its final decision, the Tribunal must satisfy itself that the claim is well founded in fact and law.

Majority for decision

Article 14

Decisions both on procedure and substance of the Tribunal shall be taken by a majority vote of its members.

Time limit for final decision

Article 15

The Tribunal shall render its final decision within five months of the date on which it is fully constituted unless it finds it necessary to extend the time limit for a period which should not exceed five more months.

Final decision

Article 16

The final decision of the Tribunal shall be confined to the subject-matter of the dispute and shall state the reasons on which it is based. It shall contain the names of the members who have participated and the date of the final decision. Any member of the Tribunal may attach a separate or dissenting opinion to the final decision.

Authority of award

Article 17

The award shall be binding on the parties to the dispute. It shall be without appeal unless the parties to the dispute have agreed in advance to an appellate procedure.

Controversy on interpretation or implementation

Article 18

Any controversy which may arise between the parties to the dispute as regards the interpretation or manner of implementation of the final decision may be submitted by either party for decision to the Tribunal which rendered it.

Italicized headings

Article 19

The italicized headings of the present procedures are for reference purposes only. They shall be disregarded in the interpretation of the procedures.

Appendix II

DRAFT ANNEX ON CONCILIATION

Following is the text of a draft annex on conciliation, which could be adopted as Annex VI of the Convention.

ANNEX VI

CONCILIATION

Purpose

Article 1

The present Annex provides the procedures for conciliation referred to in article 28 of the Convention.

Creation of Conciliation Commission

Article 2

A Conciliation Commission shall be created at the request of any party to a dispute in accordance with the provisions of article 28, paragraph 6 of the Convention.

Composition and appointment of members

Article 3

1. The Conciliation Commission shall, unless the parties otherwise agree, be composed of five members, two appointed by each party concerned and a President chosen jointly by those members.

2. In disputes between more than two parties, parties in the same interest shall appoint their members of the Commission jointly by agreement. Where two or more parties have separate interests or there is a disagreement as to whether they are of the same interest, they shall appoint their members separately.

Failure to appoint members within time limit

Article 4

If any appointments by the parties are not made within two months of the date of the request to create a Conciliation Commission, the Secretary-General of the United Nations shall, if asked to do so by the party that made the request, make those appointments within a further two-month period.

Failure to appoint President within time limit

Article 5

If a President of the Conciliation Commission has not been designated within two months of the last of the members of the Commission being appointed, the Secretary-General of the United Nations shall, if asked to do so by a party, designate a President within a further two-month period.

Procedure

Article 6

The Conciliation Commission shall, unless the Parties to the dispute otherwise agree, determine its own procedure.

Decisions on competence

Article 7

A disagreement as to whether the Conciliation Commission has competence shall be decided by the Commission.

Majority required for decisions

Article 8

Decisions both on procedure and substance of the Conciliation Commission shall be taken by a majority vote of its members.

Proposal for resolution

Article 9

The Conciliation Commission shall render a proposal for resolution of the dispute, which the parties shall consider in good faith.

Italicized headings

Article 10

The italicized headings of the present procedures are for reference purposes only. They shall be disregarded in the interpretation of the procedures.

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